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IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

THE MILLER-WOHL COMPANY, INC.,
Appellant,
v.
COMMISSIONER OF LABOR AND INDUSTRY, STATE OF MONTANA, and TAMARA L. BULEY,
Appellees.

On Appeal from the Supreme Court of Montana

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF THE JURISDICTIONAL STATEMENT

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Chamber of Commerce of the United States moves for leave to file the attached brief *amicus curiae* pursuant to Supreme Court Rule 36.1. Appellant Miller-Wohl has consented to the filing of this brief.[1] This motion is necessary because counsel for Appellee Commissioner of Labor and Industry has refused to consent to the filing of this brief, and efforts to obtain the consent of counsel for Appellee Tamara L. Buley were unsuccessful.

The Chamber of Commerce of the United States ("Chamber") is the largest federation of business organizations and individuals in the United States. Its current membership exceeds 184,000, including over

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[1] A copy of the consent letter has been filed with the Clerk.

180,000 corporations, partnerships and proprietorships, as well as several thousand trade associations and state and local chambers of commerce. Moreover, the Chamber has over 1,162 members in the state of Montana.

As one of its principal functions, the Chamber regularly presents its members' views in court on a broad range of legal issues, including equal employment issues.[2] This case involves the scope of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"), as amended by the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k) (1984) ("PDA"). At issue is whether a Montana law that requires preferential treatment of pregnant employees is preempted by the PDA.

The PDA has been of particular interest to the Chamber since its enactment. As a result, the Chamber has participated in several cases concerning its scope. *See, e.g., Kansas Association of Commerce and Industry* v. *EEOC*, 22 Fair Empl. Prac. Cas. (BNA) 1343 (D. Kan. 1980) (the first case filed in federal district court challenging the Equal Employment Opportunity Commission's promulgation and enforcement of Final Interpretive Guidelines concerning the PDA, 29 C.F.R. § 1604.10(b) (1981)); *Newport News Shipbuilding and Dry Dock Co.* v. *EEOC*, 462 U.S. 669 (1983) (involving the question of whether a company's health insurance plan that covers the medical expenses of female employees' spouses discriminates against male employees, if it does not cover their spouses' medical expenses arising from pregnancy-related conditions).

Most recently, the Chamber filed a brief in the Ninth Circuit on a preemption question similar to the one pre-

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[2] *See, e.g., United Telecommunications, Inc.* v. *Saffels, cert. denied*, 53 U.S.L.W. 3669 (U.S. Mar. 18, 1985) (No. 84-1002); *Northwest Airlines, Inc.* v. *Laffey, cert. denied*, 53 U.S.L.W. 3507 (U.S. Jan. 14, 1985) (No. 84-825); *U.S. Postal Service* v. *Aikens*, 460 U.S. 711 (1983).

sented here. *See, California Federal Savings & Loan Ass'n* v. *Guerra*, 34 Fair Empl. Prac. Cas. (BNA) 562 (C.D. Cal. 1984), *rev'd*, Nos. 84-5843 and 44, slip op. (9th Cir. Apr. 16, 1985) (holding that Title VII does not preempt a California statute that requires employers to grant up to four months of pregnancy disability leave to employees "disabled on account of pregnancy, childbirth, or related medical conditions"). In light of the Ninth Circuit's recent decision, it is particularly important that the business community's perspective on preferential treatment in the workplace be presented to this Court.

The Montana statute at issue in this case requires employers to grant "reasonable leave of absence" to pregnant employees, whether disabled or not, and to reinstate them when they come back to work. Montana Maternity Leave Act, Mont. Code Ann. § 49-2-310 to 311 (1983).[3] These requirements apply regardless of the employer's existing policy on disability leave. Thus, employers in Montana must grant leave to pregnant employees, even when company policy does not provide leave to other employees.

Preferential state laws in an area pervasively regulated by the federal government present difficult problems for many Chamber members in Montana and in other states. Montana members find themselves caught in the untenable position of trying to comply with a state law that requires *special treatment* of pregnant employees when federal law requires *equal treatment* of all employees.

Multistate employers face an even greater dilemma, having to reconcile the preferences mandated by vari-

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[3] The Montana Maternity Leave Act was originally codified at Mont. Code Ann. §§ 39-7-210 *et seq.* and was recodified, effective July 1, 1983, at Mont. Code Ann. § 49-2-310 under the Montana Human Rights Act.

ous state laws with a federal statute that mandates equality in the workplace. Without federal preemption, uniform personnel policies will be impossible and compliance improbable. Disparate personnel practices will cause dissension within the workforce, and subject employers to charges of discrimination from disabled male employees as well as female employees with non-pregnancy-related disabilities.

The Chamber is concerned about the labor relations problems that result from the Montana Maternity Leave Act and similar state statutes that require preferential treatment of pregnant employees. The Chamber is also concerned about the impact of preferential state laws on national uniformity within the equal employment opportunity field. For these reasons, the Chamber respectfully submits this brief, and urges this Court to note probable jurisdiction on this important Title VII issue.

Respectfully submitted,

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST	1
INTRODUCTION	1
ARGUMENT	
I. THE MONTANA MATERNITY LEAVE ACT MANDATES PREFERENTIAL TREATMENT OF PREGNANT EMPLOYEES IN VIOLATION OF FEDERAL LAW	3
A. Federal Law Requires Equal, Not Special Treatment	5
B. Federal Law Protects Only Employees Who Are Disabled by Pregnancy	6
II. THE MONTANA MATERNITY LEAVE ACT IS PREEMPTED BY FEDERAL LAW AND INVALIDATED BY THE SUPREMACY CLAUSE OF THE CONSTITUTION	8
A. Employers Cannot Comply With The Montana Statute Without Violating Federal Law	9
B. The Montana Statute Undermines the Objectives of Federal Law	10
CONCLUSION	11

TABLE OF AUTHORITIES

CASES — Page

Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. *Norris*, —— U.S. ——, 103 S. Ct. 3492 (1983) .. 10

Florida Lime & Avocado Growers, Inc. v. *Paul*, 373 U.S. 132 (1963) 9

General Electric Co. v. *Gilbert*, 429 U.S. 125 (1976) 4, 10

Hines v. *Davidowitz*, 312 U.S. 52 (1941) 9

Homemakers, Inc. v. *Division of Industrial Welfare*, 509 F.2d 20 (9th Cir. 1974), *cert. denied*, 423 U.S. 1063 (1976) 10

Silkwood v. *Kerr-McGee Corp.*, —— U.S. ——, 104 S. Ct. 615 (1984) 8, 9

UNITED STATES CONSTITUTION

Supremacy Clause, Art. VI, § 2 ..... 8, 9

STATUTES

Montana Maternity Leave Act, Mont. Code Ann. § 49-2-310 to 311 (1983) ..... *passim*

Pregnancy Discrimination Act of 1978, Pub. L. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k)) ..... *passim*

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ..... *passim*

Title XI of the Civil Rights Act of 1964, 42 U.S.C. § 2000h-4 ..... 2, 8, 9

LEGISLATIVE MATERIALS

123 Cong. Rec. 29,387 (1977) 10, 11

123 Cong. Rec. 29,663 (1977) 9

123 Cong. Rec. 29,664 (1977) 5

Committee Print of the Legislative History of the PDA prepared for the Senate Committee on Labor and Human Resources (June 1980) 4, 5, 6, 7, 8

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BRIEF AMICUS CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF THE JURISDICTIONAL STATEMENT

STATEMENT OF INTEREST

The Chamber of Commerce of the United States ("Chamber") respectfully refers this Court to its Motion for Leave to File Brief *Amicus Curiae* for a statement of its interest in this proceeding.

INTRODUCTION

This appeal from the Supreme Court of Montana arises out of Miller-Wohl's attempt to enjoin the enforcement of the Montana Maternity Leave Act, Mont. Code Ann. § 49-2-310 to 311 (1983).[1] That statute, as en-

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[1] The Montana Maternity Leave Act was originally codified at Mont. Code Ann. §§ 39-7-201 *et seq.*, and was recodified, effective July 1, 1983 at Mont. Code Ann. § 49-2-310 under the Montana Human Rights Act.

forced by the state, requires employers to grant "a reasonable leave of absence" to pregnant employees and to reinstate them when they return to work. The state law applies even when pregnancy is not disabling and company policy does not grant disability leave or reinstatement rights to other temporarily disabled employees.[2]

Miller-Wohl challenged the Montana Maternity Leave Act in the court below on the grounds that it requires preferential treatment of pregnant employees in violation of Title VII, the Pregnancy Discrimination Act (which amended Title VII in 1978) ("PDA"), and Title XI of the Civil Rights Act of 1964. 42 U.S.C. §§ 2000e, 2000e(k), and 2000h-4. Miller-Wohl also argued that the Montana law is preempted by these federal statutes, and therefore is null and void under the Supremacy Clause. The court below rejected the company's arguments and upheld the state statute as consistent with federal law.[3]

The Chamber believes that the Montana statute interferes with the intent of Congress in amending Title VII

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[2] Section 49-2-310 provides, in relevant part:

> It shall be unlawful for an employer or his agent to:
>
> (1) terminate a woman's employment because of her pregnancy;
>
> (2) refuse to grant the employee a reasonable leave of absence for such pregnancy;
>
> (3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer; provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties.

[3] The decision of the Montana Supreme Court is reported at 692 P.2d 1243 (Mont. 1984), and is reprinted in Miller-Wohl's Jurisdictional Statement at Appendix b.

to include the Pregnancy Discrimination Act. The legislative history of the PDA states in no uncertain terms that Congress intended employers to treat pregnant employees *the same* as all other employees. Congress did not intend to require employers to provide special treatment to pregnant employees who are not disabled. Nor did Congress intend to require employers to make special provisions for pregnant employees when similar provisions do not exist for other employees. Yet these are precisely the types of requirements Montana has imposed by enacting and enforcing this statute. The Montana Maternity Leave Act is an obstacle to federal equal employment objectives, and employers cannot comply with it without violating federal law. For these reasons, this Court should note probable jurisdiction in this case.

ARGUMENT

I. THE MONTANA MATERNITY LEAVE ACT MANDATES PREFERENTIAL TREATMENT OF PREGNANT EMPLOYEES IN VOLATION OF FEDERAL LAW.

This Montana statute requires preferential treatment of pregnant employees in two ways. It requires employers to grant employees "reasonable leave of absence" and reinstatement simply because they are pregnant, without regard to their ability to work. And it imposes these requirements regardless of the employer's existing personnel policies. Thus, employers in Montana must provide leave to pregnant employees, regardless of disability and regardless of whether company policy provides leave to other employees. By providing pregnant employees with greater rights than are accorded other employees, the Montana statute flies in the face of the Pregnancy Discrimination Act and its legislative history. In so doing, the state statute contravenes federal law, and must be struck down.

Congress enacted the PDA as an amendment to § 701 of Title VII.[4] Its purpose was to ensure equal treatment of pregnant employees in the workplace by overruling this Court's decision in *General Electric Co.* v. *Gilbert*, 429 U.S. 125 (1976).[5] In *Gilbert*, this Court had ruled that employers who excluded pregnancy-related disabilities from an employee disability income plan did not discriminate on the basis of sex in violation of Title VII.

In reversing *Gilbert*, Congress made it clear that an employee disabled by pregnancy is to be treated like any other disabled employee. The PDA and its legislative history conclusively establish that Congress did not intend preferential treatment of pregnant employees. Section 2000e(k) explicitly states that "women affected by pregnancy" shall be treated "*the same* for all employment-related purposes . . . *as other persons not so affected but similar in their ability or inability to work*" (emphasis added).

Thus, under the PDA, employers who do not provide benefits to other disabled employees are not required to provide them to employees disabled by pregnancy. The

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[4] The Pregnancy Discrimination Act of 1978, Pub. L. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k)), provides in relevant part:

> (k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise.

[5] *See* Committee Print of the Legislative History of the PDA prepared for the Senate Committee on Labor and Human Resources (June 1980) (hereinafter "Leg. Hist.") at 132.

statute "in no way provides special disability benefits for working women." 123 Cong. Rec. 29,664 (1977) (statement of Senator Brooke, co-sponsor of S. 995, the bill that ultimately became the PDA). Rather, the PDA requires an employer to provide employees disabled by pregnancy with the same benefits, for the same period, and on the same terms as provided to other disabled employees. The "employment-related purposes" for which the PDA mandates equal treatment include disability benefits, medical benefits, leaves of absence, sick leave and reinstatement rights. Leg. Hist. at 41-43.

A. Federal Law Requires Equal, Not Special Treatment.

In addition to the plain meaning of § 2000e(k), the legislative history of the PDA contains repeated expressions of congressional intent that pregnant employees receive equal, but not special, treatment. Of particular note are the words of Congressman Hawkins, a principal sponsor of the House bill:

> Like title [sic] VII, generally, [the PDA] merely requires that employers not discriminate. Thus, an employer *who does not now* provide disability benefits to his employees *will not have to* provide such benefits to women disabled due to pregnancy or childbirth.

Leg. Hist. at 25 (emphasis added).

Other members of Congress were similarly emphatic about not requiring employers to create special benefits for pregnant employees. Senator Williams, Chairman of the Senate Human Resources Committee and a chief sponsor of S. 995, remarked in debate:

> [I]t is important to bear in mind that this legislation does *not* require that any employer *begin* to provide health insurance *where it is not presently provided.* Rather, it requires that employers who do

> provide health insurance do so on a non-discriminatory basis.

Leg. Hist. at 64 (emphasis added).[6]

And according to the Senate report on S. 995, "[a]n employer who does not provide disability benefits or paid sick leave to other employees will not, because of S. 995, have to provide these benefits" to pregnant employees. Leg. Hist. at 41. Clearly, Congress intended only that employers provide pregnant employees with the same benefits already available to other employees.

Contrary to the PDA and its legislative history, the Montana Maternity Leave Act does not treat pregnant employees "the same" as other employees. Rather, the Montana statute requires employers to grant leave to pregnant employees, even if they are not disabled by pregnancy and company policy does not provide similar leave to other workers. Congress did not intend to allow, much less mandate, such unequal treatment in the workplace. Preferential treatment of pregnant employees, as legislated by the Montana statute, squarely conflicts with federal law, and must be struck down.

B. Federal Law Protects Only Employees Who Are Disabled by Pregnancy.

The plain meaning of the PDA and its legislative history firmly establish that pregnant employees must be treated equally with other employees based on their "ability or inability to work." The PDA does not protect employees who are simply pregnant, yet still able to work. Instead, it prohibits discrimination against employees when pregnancy *prevents* them from working, and en-

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[6] While Senator Williams' comments are directed at health insurance rather than disability leave, the relevance of his comments is clear. No special treatment of pregnant employees is required by the statute.

sures that employers will provide them with the same benefits as accorded to other disabled employees.

The legislative history of the PDA is replete with examples of congressional intent to focus on the pregnant employee's ability to work, and not on the mere fact of pregnancy. The Senate report on S. 995 states as its "basic principles" that:

> Under this bill, the treatment of pregnant women in covered employment must focus *not on their condition alone but on the actual effects of that condition on their ability to work.* Pregnant women *who are able to work* must be permitted to work on the same conditions as other employees; and *when they are not able to work* for medical reasons, *they must be accorded the same rights,* leave privileges and other benefits, *as other workers who are disabled from working.*

Leg. Hist. at 41 (emphasis added).

Accordingly, "an employer will not have to allow pregnant women to use paid sick leave or receive disability benefits simply because they are pregnant; benefits need to be paid only on the same terms applicable to other employees—that is, generally, only when the employee is medically unable to work." *Id. See also,* Statement of Senator Stafford in debate on S. 995 ("[T]his bill demands equal treatment and nothing more. When an employer treats pregnancy, childbirth, and related conditions the same as he treats any other disabling condition, then he has complied with this bill."). Leg. Hist. at 83.

When introducing the House bill (H.R. 5055), Congressman Hawkins explained:

> Nor does the bill require that employers . . . provide leave *simply because* [employees] *are pregnant. . . .* Rather, *it recognizes that for most of the time a woman is pregnant she is,* in most cases, *able to con-*

> *tinue working*, and should be allowed to do so. It also recognizes that pregnancy and childbirth does [sic] cause some period during which a woman is *medically unable to work*. For 95 percent of women, that period is 6 weeks or less. *It is only during this period*, unless there are complications which cause the woman to be *disabled* longer, for which disability benefits or leave are required on the same basis applicable to other employees with temporary disabilities.

Leg. Hist. at 25 (emphasis added).

In direct conflict with the PDA, the Montana Maternity Leave Act makes it unlawful for employers to refuse to grant "reasonable leave of absence" to pregnant employees, whether disabled or not. By requiring employers to extend such leave without regard to ability to work, the Montana statute contravenes the express intent of Congress in passing the PDA. Congress specifically provided for *equal* treatment of employees *disabled* by pregnancy, not preferential treatment of employees when pregnancy does not prevent them from working. Thus, the Montana statute conflicts with federal law, with regard both to equal treatment and disability.

II. THE MONTANA MATERNITY LEAVE ACT IS PREEMPTED BY FEDERAL LAW AND INVALIDATED BY THE SUPREMACY CLAUSE OF THE CONSTITUTION.

Under the Supremacy Clause of the Constitution,[7] a state law is invalid if Congress has shown an intent to occupy a given field,[8] or if state and federal law conflict. *Silkwood* v. *Kerr-McGee Corp.*, —— U.S. ——, 104 S. Ct. 615, 621 (1984). Titles VII and XI also contain specific

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[7] U.S. Const. art. VI, § 2.

[8] This type of preemption is inapplicable here, as Congress did not intend to occupy the entire equal employment opportunity field. *See* 42 U.S.C. §§ 2000e-7 and 2000h-4.

provisions regarding statutory preemption. Title VII preempts any state law that operates to require or permit unlawful employment practices. § 708, 42 U.S.C. § 2000e-7. Similarly, Title XI invalidates any state law that "is inconsistent with the purposes of this Act." § 1104, 42 U.S.C. § 2000h-4. The Montana Maternity Leave Act must be struck down under both the Supremacy Clause and the preemption provisions of Titles VII and XI.

This Court has made it clear that the Supremacy Clause invalidates state legislation when it is impossible to comply with both state and federal law, *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142-143 (1963), or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress. *Hines* v. *Davidowitz*, 312 U.S. 52, 67-68 (1941). *Accord, Silkwood* v. *Kerr-McGee Corp.*, 104 S. Ct. at 621. The Montana Maternity Leave Act causes both of these problems. Moreover, it operates to require unlawful employment practices, and is plainly inconsistent with the purposes of the Equal Employment Opportunity Act. For these reasons, this Court should note probable jurisdiction.

A. Employers Cannot Comply With The Montana Statute Without Violating Federal Law.

The Montana Maternity Leave Act is clearly at odds with the PDA. Unless it is invalidated, employers in Montana will continue to be faced with the task of complying with a state statute that requires special treatment of pregnant employees when federal law requires equal treatment of all employees. These two mandates are entirely inconsistent. Employers cannot comply with one without violating the other.

The PDA "does not . . . require that an employer do anything more for his pregnant employees than he does for any other employees." 123 Cong. Rec. 29,663 (1977). In fact, it "would prohibit as sex discrimination any personnel practice . . . which treats pregnancy . . . differently

than other conditions which also cause inability to work . . . ." *Id.* at 29,387. As demonstrated above, the Montana statute flies in the face of the PDA by providing pregnant employees greater rights than are accorded other employees. In so doing, the state statute contravenes federal law, and must be struck down.

Any suggestion that the conflict between the Montana Maternity Leave Act and the PDA can be eliminated by extending the state-mandated benefits to all employees must be rejected. Requiring Miller-Wohl to revise company policy, first by granting preferential leave to pregnant employees and then by extending leave to all employees, would turn the PDA on its head. This result is not required by federal law, and imposing it would violate that law. *Homemakers, Inc.* v. *Division of Industrial Welfare*, 509 F.2d 20 (9th Cir. 1974), *cert. denied*, 423 U.S. 1063 (1976).

B. The Montana Statute Undermines the Objectives of Federal Law.

Federal law requires equal treatment of all disabled employees, pregnant or otherwise, and does not permit arbitrary preferences of one type of disability over another. Differential treatment on the basis of pregnancy constitutes sex discrimination in violation of Title VII. *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans* v. *Norris*, —— U.S. ——, 103 S. Ct. 3492, 3498 n.14 (1983). *See also, General Electric Co.* v. *Gilbert*, 429 U.S. 125, 161-62 (1976) (Brennan, J., dissenting) ("Surely it offends common sense to suggest . . . that a classification revolving around pregnancy is not, at the minimum, strongly 'sex-related.'"). The Montana Maternity Leave Act conflicts with this goal of equal opportunity by requiring preferential treatment of pregnant employees, without regard to their ability to work. The requirements of the Montana statute legislate discrimination in direct violation of Title VII.

The PDA was designed to protect workers disabled by pregnancy from employment practices *not* faced by other disabled workers. 123 Cong. Rec. 29,387. It adopted equality of treatment as its standard, making benefits contained in existing personnel programs the measure of an employer's duty toward pregnant employees. In contrast, the Montana Maternity Leave Act has adopted preferential treatment as its standard, thereby undermining the objectives of federal law.

CONCLUSION

The preferences mandated by this state statute contravene the purposes of the PDA, forcing employees to choose between state and federal law because they cannot comply with both. For these reasons the Chamber respectfully urges this Court to note probable jurisdiction in this case.

Respectfully submitted,

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